

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI R.S. SYAL, AM & SHRI K.N. CHARY, JM

ITA Nos.4800 & 4801/Del/2012  
Assessment Year : 2008-09

DCIT,  
Circle-1(1),  
New Delhi.

Vs. A Little World Pvt. Ltd.,  
21-22 'B', IInd Floor,  
Hakoba Mill Compound,  
Dataram Lad Path, Kalachowki,  
Mumbai.

PAN: AACCA5044R

Assessee By : Shri Sanjay Jain, CA  
Deptt. By : Shri S.K. Jain, DR

Date of Hearing : 20.12.2016  
Date of Pronouncement : 21.12.2016

ORDER

PER R.S. SYAL, AM:

These two appeals by the Revenue relating to the assessment year 2008-09 pertain to quantum as well as penalty matters. Since related issues are raised in these appeals, we

are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

### **Quantum appeal**

2. First ground of the Revenue's appeal in quantum proceedings is against the deletion of addition of Rs.8,62,45,344/-.

3. Briefly stated, the facts of this ground are that the assessee is engaged in the business of developing, providing and licensing technology for enabling smart card and other electronic technology. On perusal of the assessee's balance sheet, it was found by the AO that it had shown a sum of Rs.8.62 crore as advance from customers in the balance sheet under the head 'Current liabilities' with the details ,viz., Advance from APGVB (against cards) – Rs.4,05,71,314/- and Advance from SBI (against cards) – Rs.4,56,74,030/-. On being called upon to justify the showing of this amount as advance, the assessee submitted that this amount was received

as 50% of total amount towards the supply of a particular number of cards, which was eventually adjusted against the supply of cards when invoices were raised in subsequent years. Not convinced, the AO made the addition. The Id. CIT(A) ordered for the deletion of addition.

4. After considering the rival submissions and perusing the relevant material on record, we find that the assessee has contended before the authorities below that a sum of Rs.8.62 crore was in the nature of advance and shown as income in later year(s). On an earlier occasion when this appeal came up for hearing, the Bench directed the Id. DR to verify this contention of the assessee from the records of the AO. No intimation has been received despite the fact that such direction was given on 9<sup>th</sup> July, 2013 and a period of more than three years has elapsed since then. Under these circumstances, we are of the considered opinion that it would be in the fitness of things if the impugned order is set aside and the matter is

restored to the file of the AO. We order accordingly and direct him to verify the assessee's contention about the offering of Rs.8.62 crore to tax in the subsequent year(s). If such contention of the assessee is found to be correct, then, of course, no addition can be sustained in this year. In the otherwise scenario, the remaining amount should be charged to tax in this year itself.

5. Ground No.2 of the Revenue's quantum appeal is against the deletion of addition of Rs.9,20,518/- towards Research and development expenses. The assessee claimed deduction of Rs.9,20,518/- by treating it as a research and development expenses. On being called upon to justify the deductibility, the assessee stated that it started developing an application for the enrolment of beneficiaries of mobile phone. The application software could not be developed up to the requirement for usage on the field and the same was expensed

out. The AO treated this amount as capital in nature and made the addition, which came to be deleted in the first appeal.

6. We have heard both the sides and perused the relevant material on record. The assessee admitted that this sum was incurred on a software to be used by the assessee in its own business. It was further admitted that if this software had been successfully made, then, it would have been a capital expenditure. As the software could not be properly developed and the assessee wrote it off, in our considered opinion, this is in the nature of a capital loss not requiring any deduction. The view taken by the Id. CIT(A) on this issue is reversed. This ground is allowed.

7. In the result, the appeal is partly allowed.

### **Penalty appeal**

8. This appeal is against the deletion of penalty imposed by the AO u/s 271(1)(c) of the Act amounting to Rs.2,96,27,675/- in relation to the above discussed two additions. While

dealing with the quantum appeal, we have restored the matter concerning the first issue of deletion of addition of Rs.8.62 crore to the AO. The impugned order is set aside to this extent and the instant penalty on such restored issue is sent back to the AO for taking an appropriate decision after the finalization of the fresh assessment pursuant to the tribunal order. Our view in restoring the penalty to the AO is fortified by the judgment of the Hon'ble Supreme Court in the case of *Mohd. Mohatram Farooqui vs. CIT (SC) 2010-TIOL-23-SC-IT* in which it has been held that if addition is restored to the AO, then penalty should also be restored. The Hon'ble jurisdictional High Court in *Sanjay Gupta vs. CIT (2014) 366 ITR 18 (Del)* has also held that where the quantum has been remanded to the AO, the question of penalty on account of the said amount being treated as undisclosed income, should also be remanded to the AO. We, therefore, set aside the impugned order and remit the matter to the file of the AO for determining the question of penalty or otherwise on the issue, after the passing of the order pursuant to the restoration made by the Tribunal.

9. As regards the second addition of Rs.9,20,518/- which we have confirmed, we find that the same is a case in which the assessee declared necessary particulars before claiming deduction and it was a *bona fide* view of the assessee about the eligibility of such claim for deduction, not warranting any penalty u/s 271(1)(c) of the Act. The Hon'ble Supreme Court in the case of *Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC)* has held that simply for the reason that the AO did not find the claim of the assessee to be sustainable in law up to a certain extent, cannot justify penalty u/s 271(1)(c), more so, when particulars furnished by the assessee were not found to be inaccurate. The facts of the instant issue as tested on the *ratio decidendi* of the judgment of the Hon'ble Supreme Court in the above judgment, do not call for any penalty on this addition. The impugned order in deleting the penalty to this extent is approved.

10. In the result, the appeal is partly allowed for statistical purposes.

Order Pronounced in the open Court on 21.12.2016.

Sd/-

[K.N. CHARY]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
ACCOUNTANT MEMBER

Dated, 21<sup>st</sup> December, 2016.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.